QUESTIONS PRESENTED

1. Whether or not there was probable cause for the seizure of the container.

2. Whether or not under the Fourth Amendment, an officer who has probable cause to believe that there is contraband in a specific container within a vehicle is required to obtain a search warrant for that container?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1690

CALIFORNIA,

Petitioner,

v.

CHARLES STEVEN ACEVEDO,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Fourth Appellate District

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RESPONDENT'S BRIEF

STATEMENT OF THE CASE

Respondent's position is that Petitioner's statement of the case is accurate except that the following language is not supported by any fact in the record below:

> ". . . and of the approximate size of the wrapped marijuana packages that Agent McCarthy had seen." (Petitioner's Brief on the Merits, p. 10)

If this language is stricken, Respondent accepts Petitioner's statement of the case.

SUMMARY OF ARGUMENT

The California Court of Appeal found that there was probable cause for a warrantless search of the trunk and the seizure of the brown paper bag under the automobile exception to the Fourth Amendment. [*People v. Acevedo*,

216 Cal. App. 3d 586, 590 (1989)] However, the Court of Appeal misinterpreted the facts. Thus, the Court arrives at the erroneous conclusion that the brown paper bag in Acevedo's hand when he emerged from the apartment "approximated the size of the wrapped packages Officers knew contained marijuana" (*Ibid.*) Since the packages seen by Officer Coleman were approximately 12 inches by 4 inches by 3 inches and weighed approximately 2 pounds, they could not be the same size as the package carried by Acevedo which weighed between one-quarter and one-half pound. The Court of Appeal comes to another erroneous conclusion that ". . . the occupant of the apartment was not in . . ." (*Ibid.*). Again, the record below clearly indicates that the occupant, J. R. Daza, was in the apartment. Without these erroneous conclusions it is clear that probable cause did not exist to believe that the brown paper bag carried by Acevedo as he exited apartment 12 contained marijuana.

If there was probable cause to believe the bag carried by Acevedo as he exited apartment 12 contained marijuana, the California Court of Appeal had no difficulty in stating a Bright Line Rule explaining this exception to the Fourth Amendment as follows:

> If Police have probable cause to believe contraband is concealed in a particular container, they must obtain a warrant before searching it, even when it is being stored in a vehicle. If the investigation has, for whatever reason, yet to focus on a particular container and there is only probable cause to believe the contraband is located *somewhere* in an automobile, officers may conduct a warrantless search of any container in the car that could reasonably conceal the evidence (*People v. Acevedo*, 216 Cal. App. 3d 586, 591).

Carroll v. United States, 267 U.S. 132 (1925) does not allow all trunk searches without a warrant.

> This is to say that the facts and circumstances within their (the officer's) knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched. (*Id.* at 162.)

This Court in *Carroll* found probable cause to search the vehicle in its entirety. *Carroll* did not address a closed container within the vehicle or a closed container within a locked compartment of the vehicle.

A person has an expectation of privacy in any closed container. Once that closed container is placed in an automobile his expectation of privacy is not diminished. Furthermore. when that package is placed in a locked trunk of his vehicle his expectation of privacy is greater. A well educated police force will have no difficulty in determining when probable cause exists to search a container within the trunk of an automobile and law enforcement will suffer no detriment.

Once a vehicle is immobilized, any exigency ceases in most cases.

United States v. Chadwick, 433 U.S. 1 (1977) and *United States v. Ross*, 456 U.S. 798 (1982) are compatible and need not be overruled. This court specifically stated that probable cause existed for the search of the entire vehicle in *Ross* as opposed to a specific container within the vehicle. In *Chadwick* the Court's focus was directed towards a specific package which was placed in the trunk of a vehicle. The crystal clear meaning of the status of the existing law is as follows:

1. Where police have probable cause to believe that a container holds contraband,

2. They may seize it, and

3. Obtain a search warrant, or

4. If an exigent circumstance exists, they may examine the contents without a search warrant.

5. The fact that the container was in a vehicle as in *Ross* is of no significance and does not create an exigent circumstance.

ARGUMENT

I. THERE WAS NOT PROBABLE CAUSE TO BELIEVE THE BAG AND ITS CONTENTS CONTAINED CONTRABAND

Rule 24.1(a) of the Rules of the Supreme Court of the United States states "At its option, however, the Court may consider *a plain error* not among the questions presented but evident from the record and otherwise within its jurisdiction to decide" thus allowing this Court to decide this issue.

In the case pending before this court, respondent has asserted at the trial court level as well as the appellate court level, that there was no probable cause to search the container.

The California Court of Appeal reaches the conclusion that there was probable cause to search the bag without analysis or discussion. The Court of Appeal merely states:

> Here, however, there was more than a fair probability Acevedo was involved in dealing drugs and carrying marijuana in the lunch bag. (Citations omitted.) Although the occupant of the apartment was not in, an empty-handed Acevedo entered within two hours of the arrival of a sizeable quantity of contraband and emerged with something in a brown paper bag which approximated the size of the wrapped packages officers knew contained marijuana. Accordingly, there was probable cause for a warrantless search of the trunk and seizure of the brown bag under the automobile exception to the Fourth Amendment. [*People v. Acevedo*, 216 Cal. App. 3d 586, 590 (1989)].

However, just prior to Acevedo, entering the residence, the facts indicate that the residence contained approxi-

mately 18 pounds of marijuana which arrived in a picnic cooler containing nine plastic bags approximately 12″ by 4″ by 3″.

Approximately 45 minutes after it was known that the marijuana was in the dwelling, Acevedo arrived empty-handed, stayed for approximately ten minutes, and left with a lunch bag that appeared to be full. He then proceeded to his car, placed the bag in the locked trunk and drove away. Respondent takes issue with the Statement of Facts proffered by Petitioner in only one aspect. Although the California Court of Appeal states in its opinion that "Acevedo . . . emerged with something in a brown paper bag which approximated the size of the wrapped packages officers knew contained marijuana", (*Ibid.*) there is nothing in the record before this court or the courts below to support that conclusion. Furthermore, the record is clear that the bags seen by Officer Coleman were approximately 12″ x 4″ x 3″ and weighed approximately two pounds each. Most countries, except the United States, use the metric system. Two pounds is just short of one kilo. A kilo is a common packaging method in metric countries for many products, including narcotics. The facts are that the amount of contraband seized from the Respondent was one-quarter to one-half pound. One quarter to one-half pound would not occupy the same space as two pounds. It is clear that while the lunch bag Acevedo carried as he exited the apartment may have been full, it was clearly not the same size as the package seen by Officer Coleman of the Santa Ana Police Department. Therefore, the Court of Appeal has no basis for its conclusion that the "brown paper bag . . . approximated the size of the wrapped packages" (*Ibid.*) in the box picked up by J.R. Daza.

Absent that fact, an individual entered a dwelling at approximately 12:30 p.m. and left 10 minutes later with a full lunch bag. It is not uncommon for a person to carry his lunch in a bag. It is also not uncommon for a person to eat lunch around noon. It is not uncommon

for one to go home, pick up his lunch and return to work. From the record, J.R. Daza was a resident of this dwelling and at home at 11:45 a.m. despite the Court of Appeal statement that "Although the occupant of the apartment was not in, an empty-handed Acevedo entered within two hours of the arrival of a sizeable quantity of contraband . . ." (*Ibid.*). The record below would lead a reasonable man to believe that J.R. Daza was still in the apartment when Respondent arrived and departed. The record is void of any evidence as to whether or not Acevedo may or may not have been a resident of 807 West Stevens, Apartment 12, Santa Ana, California. Furthermore, there is no evidence in the record that Acevedo had any connection with J.R. Daza. For all we know Acevedo was Daza's son, brother, partner, roommate, employer, employee or any number of other relationships. Even though the police knew there was marijuana present, there is no evidence that Acevedo knew marijuana was present. Acevedo's intentions could have been to pick up his own lunch, a package of unknown contents for some friend, some Tupperware his wife had ordered from Daza, or any number of legal items.

It might be analogized to contraband being delivered to my house and 45 minutes later the Attorney General arrives to pick up my brief. I gladly give it to him in an envelope. At that point, has the Attorney General, while leaving my house, subjected that sealed brown paper package to its search and/or seizure? Clearly, in this case there is insufficient probable cause for the seizure of the bag and its contents.

II. WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT CONTRABAND IS IN A SPECIFIC CONTAINER WHICH IS SUBSEQUENTLY PLACED IN THE LOCKED TRUNK OF AN AUTOMOBILE AND THE AUTOMOBILE IS SUBSEQUENTLY DRIVEN AWAY THE VEHICLE MAY BE STOPPED, THE CONTAINER SEIZED, BUT A SEARCH WARRANT IS REQUIRED PRIOR TO SEARCHING THE CONTAINER

A. If There Is Probable Cause to Believe That the Bag Contains Contraband, the Authorities May Not Search the Bag Without a Warrant

There is no probable cause to believe the vehicle contained contraband other than that which is in the bag. The factor that distinguishes this case from *United States v. Ross*, 456 U.S. 798, 823 (1982) is that in *Ross* the police had probable cause to believe that the vehicle *and* the trunk of the vehicle specifically contained narcotics. Here, as in *United States v. Chadwick*, 433 U.S. 1 (1977), the only connection the contraband has with the vehicle is the fact that the container carrying it was placed into the trunk of the vehicle. There was no informant who said, "Acevedo is selling marijuana from the trunk of his car".

The California Court of Appeal correctly states the current status of the case law explaining this exception to the Fourth Amendment.

> Where, prior to a search, officers have probable cause to believe that a specific closed container holds contraband . . ., they must obtain a search warrant before opening it, even though it is located in an automobile. [*People v. Acevedo*, 216 Cal. App. 3d 586, 592, Quoting from *United States v. Salazar*, 805 F.2d 1384, 1397 (9th Cir. 1986).]

It has been demonstrated to this Court that it is possible to obtain a search warrant in less than one hour. (*California v. Carney*, 471 U.S. 386, 404 Footnote 16.)

In prior decisions this Court spent much time balancing the individual's right to privacy against the society's right for the prevention of crime and the apprehension of criminals. Certainly no one could argue with the laudable efforts of the police departments in seizing drugs and arresting criminals. However, the framers of the Constitution recognized that even though it is desirable to apprehend criminals, it is more desirable that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" be protected. It is difficult to see how the People of the State of California can be prejudiced, absent an exigency, by the delay of one hour in the obtaining of a search warrant for the paper bag when weighed against the intrusion into an individual's private papers in complete disregard of the Fourth Amendment.

B. The Bright Line Rule Which Petitioner Urges Should Be "If Police Have Probable Cause to Believe Contraband Is Concealed In a Particular Container, They Must Obtain a Warrant Before Searching It, Even When It Is Being Stored in a Vehicle"

Petitioner argues for a Bright Line Rule in order to facilitate law enforcement objectives. Respondent certainly does not argue with Petitioner's request for a Bright Line Rule, only as to where that bright line should be drawn.

The Court of Appeal had no difficulty in stating a Bright Line Rule by stating that:

> IF POLICE HAVE PROBABLE CAUSE TO BELIEVE CONTRABAND IS CONCEALED IN A PARTICULAR CONTAINER, THEY MUST OBTAIN A WARRANT BEFORE SEARCHING IT, EVEN WHEN IT IS BEING STORED IN A VEHICLE. If the investigation has, for whatever reason, yet to focus on a particular container and there is only probable cause to believe the contraband is located *somewhere* in an automobile, officers may conduct a warrantless search of any container in the car that could reasonably conceal the evidence. [*People v. Acevedo*, 216 Cal. App. 3d 586, 591. (Emphasis added.)]

That line is certainly bright. Petitioner does not want a Bright Line Rule; Petitioner wants the abolition of the Fourth Amendment as it relates to automobiles.

The Attorney General would have us believe that if the Court adopts their Bright Line Rule, the police will be better able to follow it. However, the plain and simple fact is that no matter how bright a line is drawn, the police will only follow it when it is convenient for them. Any liberal expansion of the authorities' right to search an individual's person, house, papers or effects will only lead to the emasculation of the Fourth Amendment. There is no legitimate reason why the police can not obtain a warrant to search any closed container within a motor vehicle.

Search warrants may be filled out merely by checking the boxes. The Affidavit in support of the search warrant would take substantially longer than the actual search warrant to complete. However, the affidavit merely states the reasons why the investigatory agency feels they have sufficient cause for the issuance of a warrant. In the stop of a motor vehicle, it would only be necessary for the officers, after they have identified themselves and any expertise which will qualify them to render an opinion, to merely state the reasons why they believe the locked compartments of a vehicle contain contraband. The reviewing magistrate either agrees with and issues the search warrant, or disagrees with the officers and refuses to issue the search warrant. In either case, it is a relatively simple matter requiring less than one hour. There is no requirement that Affidavits in Support of Search Warrants be typed or writ-

ten on any special paper. Furthermore, California authorizes the issuance of a telephonic search warrant whereby the officer can contact a magistrate by telephone, advise him of the probable cause he has for the issuance of the search warrant and receive the approval or disapproval from the Judge verbally. The Judge then authorizes the officer to affix his name to the warrant and proceed to search the area requested. (California Penal Code 1528(b).) With the incredibly sophisticated telecommunications currently available in the United States, it is difficult to conceive of a situation where virtually instantaneous contact cannot be made with a magistrate.

C. *Carroll* Does Not Allow All Trunk Searches Without a Search Warrant

Petitioner relies heavily on *Carroll v. United States*, 267 U.S. 132 (1925), but its reliance is misplaced. In *Carroll* the facts clearly state that the officers had specific knowledge of these individuals because they had attempted to buy bootlegged liquor from them two months earlier. They were familiar with the car and they were familiar with the corridor of transport, specifically the main highway from Detroit to Grand Rapids. Approximately two months earlier they had even followed the car from Grand Rapids to East Lansing (a distance in excess of 50 miles) but lost the vehicle somewhere in East Lansing. When the vehicle was stopped on the 15th of December, 1921, the officers

> Raised up the back of the roadster; didn't find any liquor there; then raised up the cushion; then I struck at the lazyback of the seat and it was hard. I then started to open it up, and I did tear the cushion some, and Carroll said, 'Don't tear the cushion; we have only got six cases in there/ and I took out two bottles and found out it was liquor; satisfied it was liquor. (*Id.* at 172.)

At this point the officers knew what was in the seats was not the Oldsmobile stuffing, but bottles of bootlegged liquor.

> This is to say that the facts and circumstances within their (the officer's) knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched. (*Id.* at 162.)

This Court in *Carroll* found probable cause to search the vehicle in its entirety. *Carroll* did not address a closed container within the vehicle or a closed container within a locked compartment of the vehicle.

Under those facts Respondent does not argue that the police could not search the vehicle. Respondent further would have no quarrel with a search of the bag had the contents been capable of determination by the feel of the bag or its smell. Neither of these factors are present in the case at bar and the failure of proof must be resolved in Respondent's favor. All these issues are issues that a magistrate would properly assess when presented with the request for the issuance of a search warrant.

D. A Person Does Not Abandon Any Privacy Interest in a Package Placed in the Locked Trunk of an Automobile

Does Respondent have a lesser expectation of privacy when he places the bag in the locked trunk of his vehicle, or does he have a greater expectation of privacy? The bag is just as mobile in the hands of an individual as it is inside of the car. Granted a car can move it farther and faster than an individual in certain circumstances, but the distance, and speed with which the bag can be moved, is of no great consequence.

It is ridiculous to assert that luggage may maintain a high degree of expectation of privacy yet when that

luggage is placed into the trunk of a vehicle the expectation of privacy is diminished. This doesn't follow.

It could be argued that when one puts a package in the passenger compartment of an automobile, their level of expectation of privacy is not increased since the article is still capable of being seen from the outside and it is only slightly more secure than if one is walking down the street carrying the article in his hands. But the expectation of privacy is not diminished either. On the other hand, when a person puts an article in the trunk of his vehicle, common sense dictates that one's expectation of privacy is greater. Furthermore, the locking of the trunk, or the placing of the item in a trunk which locks each time it is closed, further reinforces the conclusion that the person has a greater expectation of privacy in the item.

Clearly, the Respondent in this case could have placed the bag on the seat of his vehicle. However, the Respondent knowing full well the contents of the bag was contraband, put it in the trunk of his vehicle expecting the trunk to have a greater degree of security than the passenger compartment. Furthermore, the trunk was locked. One could certainly argue that the concealing of the liquor in the *Carroll* case in the upholstery of the vehicle created a higher degree of expectation of privacy. However, the mere feeling of the upholstery disclosed the contents and provides for a sufficient distinction between the case at bar and *Carroll*.

Were Acevedo's expectations legitimate? Since the package contained contraband, could Acevedo have a legitimate expectation of privacy? To test the legality of the expectation on the item found begs the question.

E. The Authority To Search the Package in the Trunk of the Car Should Not Turn on Whether or Not the Individual Is Arrested

The Court is further urged that individuals will be unreasonably detained and may suffer defacto arrests while the officer is awaiting the issuance of a search warrant. While, it is true that officers are not judges, they do receive training. The training should consist of the ability to determine when probable cause for a search exists. When officers become adequately trained to arrest people, then they should be adequately trained when to determine whether or not probable cause exists to obtain a search warrant. The officers then will not present Affidavits in Support of the Issuance of a Search Warrant when they do not have probable cause. Furthermore, once they determine that they do not have probable cause for the issuance of a search warrant, they will release the suspect and his vehicle to travel about the highways and byways of the United States as they should. On the other hand, if the officer determines that he has probable cause for the issuance of a warrant he will, rightly, detain the individual and his vehicle until such time as he obtains a search warrant. The individual can always consent to a search if his need for immediate mobility exceeds his desire for privacy. Naturally, there will be situations where the officer believed that he had probable cause, but the magistrate is not of the same opinion. In these few cases, citizens will be restrained from their freedom and their vehicles will be similarly restrained until the magistrate instructs the officer that probable cause does not in fact exist. One can hardly imagine this happening very often with a well-trained police force. Certainly, no one wants a police force operating that is not well trained. It is not an unreasonable burden to require that the police departments adequately train their personnel to determine when probable cause exists for the issuance of a search warrant.

The solution lies not in drawing clear lines, but in educating the police officers. This writer has met few, if any, police investigators, who did not know the intricacies of search and seizure laws, as well as the authors of most treatises.

F. Once a Vehicle Is Immobilized, Any Exigency Ceases

The fact that a car is mobile should not exempt it from the requirements of the Fourth Amendment. A car can be immobilized almost instantaneously. The argument that the citizen is deprived of his vehicle while the warrant is obtained, is an interesting fictionalized method of bootstrapping. In other words, the argument is that we should allow the police to search the suspect's vehicle without a warrant, because to obtain a warrant we would unreasonably inconvenience innocent citizens. That argument is without merit. An officer should not search the vehicle unless he has probable cause to believe the vehicle contains contraband or evidence needed in the prosecution of a crime. If he has such probable cause, then he must obtain a warrant. If he does not have the probable cause, the court must not allow him to willy-nilly search any vehicle just because he wants to. In other words, the officers will not be requesting searches of vehicles of innocent citizens. They will only be requesting searches of suspects of criminal activity when they have probable cause to believe that the area searched contains contraband or evidence. Therefore, no innocent citizens will be inconvenienced while the police obtain warrants. All individuals rights will be protected because the police will consciously evaluate all situations involving the searches of locked compartments of vehicles and closed containers within trunks and will request a search warrant only of those which they have determined probable cause exists for the issuance of a search warrant. Therefore, instead of citizens being subjected to unreasonable delays, all citizens' rights will be protected by proper police investiga-

tion. In the rare case that an officer's opinion of probable cause does not match the magistrate's opinion of probable cause, the warrant will not be issued. However, one can hardly say that the citizen/suspect has had his vehicle unreasonably detained. Quite the contrary, his vehicle was being reasonably detained, and his rights were being reasonably protected by the officer seeking authority from the court required by the Fourth Amendment to search the vehicle. When the magistrate does not agree with the officer, the law has been complied with, and the citizen is free to leave with his vehicle and whatever it contains free from the unreasonable intrusion of the police authorities into his personal effects.

From the foregoing analysis, it is clear that the police do not seek to search a vehicle without a warrant either to protect its citizens or to minimize the citizen's inconvenience. They seek to search citizen's vehicles for their own convenience and for the sole purpose of gathering evidence to either bolster an arrest or to effect an arrest in the first place.

The fact that an automobile is easily moved from place to place does not present a problem. As easy as it is to move an automobile, it is just as easy for the police to take possession of the vehicle and secure it while they obtain a search warant. There is no legitimate reason why the search of a vehicle should be any broader than the search of a residence. In fact, it is much easier to take possession and control of an automobile than it is to secure a residence while awaiting the issuance of a search warrant.

It is clearly more inconvenient to the occupants of a house to secure it for the purposes of obtaining a search warrant than it is to the occupants of a car to secure it for the purposes of obtaining a search warrant.

III. IT IS NOT NECESSARY TO OVERRULE *CHADWICK* OR *ROSS*

The Attorney General would like this court to overrule *Chadwick* because "the rationale for the decision in *Chadwick* has been undercut by the subsequent holdings of the court." (Petitioner's Brief on the Merits at p. 29) The Attorney General fails to recognize the Courts statement that;

> an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the *vehicle* is transporting contraband. [*United States v. Ross*, 456 U.S. 798, 823 (1982) (emphasis added)]

Again, the Court is specific in the emphasis that probable cause must exist to believe the *vehicle* contains contraband as opposed to the container within the vehicle.

The Petitioner's reliance on *United States v. Johns*, 469 U.S. 478 (1985) is equally misplaced. Petitioner fails to see the factual distinction.

> "As he and the other officer walked towards the trucks, they smelled the odor of marijuana. They saw in the back of the trucks packages wrapped in dark green plastic and sealed with tape. Based on their prior experience, the officers knew that smuggled marijuana is commonly packaged in this manner." (*Id.* at 480.)

All these observations occurred outside the vehicle. Thus, when the officers were at the vehicles they had probable cause to search the vehicle *and* the contents.

Whether or not *Chadwick* can be considered an automobile search case or not is of no consequence. The only relevant factual difference between *Chadwick* and this case is the fact that Acevedo drove away from the point at which the package was placed in the trunk and Chadwick did not. The Court notes that;

> The Government does not contend that the footlocker's brief contact with Chadwick's car makes this an automobile search, but it is argued that the rationale of our automobile search cases demonstrates the reasonableness of permitting warrantless searches of luggage; the Government views such luggage as analogous to motor vehicles for Fourth Amendment purposes. *United States v. Chadwick*, 433 U.S. 1, 11 (1977).

Although the Government did not argue the case as an automobile search, they analogized it to a motor vehicle for Fourth Amendment purposes and the Court discussed it as though it was a motor vehicle search case.

The Court specifically rejected the Government's argument of dimished expectation of privacy, stating;

> The factors which diminish the privacy aspects of an automobile do not apply to respondents footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile. (*Id.* at 13.)

The contents of the paper bag here were not open to public view, paper bags are not subject to regular inspection and official scrutiny on a continuing basis, and paper bags are becoming a more common repository of personal effects as our nation is plunged deeper into a recession.

Ross recognizes that the paper bag is no less worthy than the luggage in *Chadwick*.

> This rule applies equally to all containers, as indeed we believe it must. One point on which the Court was in virtually unanimous agreement in *Robbins v. California*, 453 U.S. 420 (1981) was that a con-

> stitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attache case. [*United States v. Ross*, 456 U.S. 798, 822 (1982)]

Clearly, here probable cause did not exist for the search of the vehicle as in *Ross* but, if at all, only for the brown paper bag. Therefore, the warrant excused in *Ross* does not apply here.

The Attorney General's second prong of attack on *Chadwick* begs the question because the officers could have searched the containers *without* a warrant at the scene in *United States v. Johns*, 469 U.S. 478 (1985), *Michigan v. Thomas*, 458 U.S. 259 (per curiam 1982) and *Florida v. Meyers*, 460 U.S. 380 (per curiam 1984). The question presented in those cases was whether or not the container search requires a warrant when the search is conducted at a later time.

Furthermore, *Johns* recognizes and tacitly affirms the principles of *Chadwick* stating;

> In *Chadwick*, police officers had probable cause to believe that a footlocker contained contraband. As soon as the footlocker was placed in the trunk of an automobile, the officers seized the footlocker and later searched it without obtaining a warrant. The Court in *Chadwick* refused to hold that probable cause generally supports the warrantless search of luggage.

> 433 U.S. at 11-13. *Chadwick*, however, did not involve the exception to the warrant requirement recognized in *Carroll v. United States*, *supra*, because the police had no probable cause to believe that the automobile, as contrasted to the footlocker, contained contraband. See 433 U.S., at 11-12. This point is underscored by our decision in *Ross*, which held that nothwithstanding *Chadwick* police officers may conduct a warrantless search of containers discovered in the course of a lawful vehicle search. See 456 U.S., at 810-814. Given our conclusion that the Customs officers had probable cause to believe that the pickup trucks contained contraband, *Chadwick* is simply inapposite. [*United States v. Johns*, 469 U.S. 478, 482 (1985)]

Petitioner further asserts that footnote 3 in the opinion by Justice O'Connor is "devoid of any analysis, is not supported by a careful examination of the policy considerations in *Ross* in respect to vehicle searches." (Petitioner's Brief on the Merits at p. 32, footnote 2)

Justice O'Connor clearly sets forth procedures for the police and the rights of the owner of a container stating;

> Where law enforcement authorities have probable cause to believe that a container holds contraband or evidence of a crime, but have not secured a warrant, the Court has interpreted the Amendment to permit seizure of the property, pending issuance of a warrant to examine its contents, if the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present. [*United States v. Place*, 462 U.S. 696, 701 (1983)]

The court footnoted that analysis stating

> In *Arkansas v. Sanders*, 422 U.S. 753, 761 (1978) the Court explained: "The police acted properly—indeed commendably—in apprehending respondent and his luggage. They had ample probable cause to believe that respondent's green suitcase contained marihuana . . . Having probable cause to believe that contraband was being driven away in the taxi, the

police were justified in stopping the vehicle . . . and seizing the suitcase they suspected contained contraband." 422 U.S., at 761.

The Court went on to hold that the police violated the Fourth Amendment in immediately searching the luggage rather than first obtaining a warrant authorizing the search. *Id.*, at 766. That holding was not affected by our recent decision in *United States v. Ross*, 456 U.S. 798, 824 (1982). (*Id.*)

The crystal clear meaning of this well reasoned opinion is that:

1. Where police have probable cause to believe that a container holds contraband,
2. they may seize it, and
3. obtain a search warrant, or
4. if an exigent circumstance exists they may examine the contents without a search warrant.
5. The fact that the container was in a vehicle as in *Ross* is of no significance and does not create an exigent circumstance.

Justice Crosby stated;

> If police have probable cause to believe contraband is concealed in a particular container, they must obtain a warrant before searching it, even when it is being stored in a vehicle. (*People v. Acevedo*, 216 Cal. App. 3d 586, 592.)

LaFave points out in his treatise on the Fourth Amendment,

> What this means is that if there is only probable cause to search a particular container in the vehicle but not probable cause to search the vehicle generally, as was true in those cases, *Ross* does not control and (subject to the possible exceptions noted later) a warrant will be required to search the container but not to seize it. (La Fave, *Search & Seizure*, Second Edition, Section 7.2(d) page 56 (1987)]

LaFave further states ". . . it is important to stress that the Court did not overturn the *Chadwick-Sanders* rule." (*Ibid.*)

CONCLUSION

The police officers are authorized to carry firearms, effect arrests which deprive citizens of their freedom. It is respectfully requested that this Court retain the minimum standard required by the Fourth Amendment interpreted by all the existing case law requiring police to obtain a search warrant to search the container in the locked trunk of a vehicle when they have particular probable cause to believe it contains contraband.

For the reasons set forth above, it is respectfully requested that this Court affirm the decision of the Court of Appeal of the State of California.

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